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# Headlines Highlights for RA's Tablet - THURSDAY, March , 2014

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## New York Times

### Coal Firm to Pay Record Penalty and Spend Millions on Water Cleanup in 5 States

**By John Schwartz**

One of the nation's biggest coal companies will pay a record civil penalty and will spend tens of millions of dollars to clean up water flowing from mines in five states, the [Environmental Protection Agency](#) and the Justice Department announced on Wednesday.

The company, Alpha Natural Resources, and 66 of its subsidiaries including the former Massey Energy, will spend \$200 million under a consent decree to reduce pollution from coal mines in Kentucky, Pennsylvania, Tennessee, Virginia and West Virginia. The company will also pay \$27.5 million, the largest civil penalty ever for permit violations under the Clean Water Act, in connection with more than 6,000 such violations from 2006 to 2013.

Under the agreement, which involved both state and federal agencies, Alpha's new equipment should prevent the discharge of about 36 million pounds of dissolved solids each year, including about nine million pounds of metals and other pollutants.

The agreement is the fifth in recent years between the agencies and coal companies, following deals with Massey in 2008, Patriot Coal in 2009, and Arch Coal and Consol Energy in 2011.

Because of such agreements, “we have a very significant share of the coal mining companies in Appalachia under consent decrees to clean up their discharges,” said Robert G. Dreher, the acting assistant attorney general for the Environment and Natural Resources Division of the Justice Department.

In a statement, Alpha noted that water safety in industrial operations had been at the forefront of public attention in recent months with a chemical spill in West Virginia and a coal ash spill in North Carolina.

“The public expects that regulators ensure that water quality is protected and that companies comply with their permits,” said Gene Kitts, Alpha’s senior vice president for environmental affairs. “That’s the way it should be. We respect and support that, and understand the concerns that these events have raised, yet there are distinct differences between those events and what we’re talking about here.”

The company’s rate of compliance with water quality permits in 2013 was 99.8 percent, Mr. Kitts said, “but our goal is to do even better.”

Joe Lovett, the executive director of Appalachian Mountain Advocates in West Virginia, expressed little enthusiasm for the agreement, saying such deals do not get to the fundamental problem of heavy pollution from mining techniques like mountaintop removal. “What E.P.A. should do is stop issuing permits that it knows coal companies can’t comply with,” he said.

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# Charleston Gazette

## House approves chemical storage tank bill, 95-0

By David Gutman

CHARLESTON, W.Va. -- After more than a month of debate by three committees, a half dozen hearings and about 100 amendments, the West Virginia House of Delegates has unanimously passed a bill in response to January's Elk River chemical leak.

Everyone agreed on the need for a bill -- it passed 95-0 - but no one could quite agree on what should be in it.

On Wednesday, for the third time this week, the House debated and tinkered late into the night on a bill regulating above-ground storage tanks, like the one at the Freedom Industries tank farm

that contaminated the drinking water of 300,000 people.

Now that the bill has cleared the House, the differences with the Senate's version must be ironed out and both bodies must re-approve the bill by Saturday night.

The House amended the bill to require the Bureau for Public Health to conduct a long-term study of health effects resulting from the chemical leak.

Both state and federal agencies are currently evaluating the records of more than 500 people who went to area hospitals reporting symptoms related to the water crisis, but are not currently doing more extensive studies of the population.

In advocating for more monitoring, Dr. Rahul Gupta, executive director of the Kanawha-Charleston Health Department, has said the people who reported symptoms are the "tip of the iceberg."

Delegate Meshea Poore, D-Kanawha, said Dr. Letitia Tierney, the commissioner of the Bureau for Public Health, had been inconsistent in her messages to lawmakers on the need for more study.

Tierney told a House committee earlier this week the bureau could do the study without legislation, but Poore and other delegates wanted to make sure the bureau did it, no matter who was in charge.

"Ms. Tierney, while she could keep her position, she might not be there next year," Poore said.

Lawmakers defeated a provision that would allow people to sue their water company, nearby chemical tank-owners, the Bureau for Public Health or the DEP to enforce the provisions of the bill.

The House passed a provision that would require West Virginia American to install an early warning monitoring system that could alert plant operators to the presence of contaminants in source water.

That requirement had also been in an earlier version of the bill, but was removed by the Finance Committee after West Virginia American gave lawmakers an information sheet arguing that the required technology was not feasible, too onerous and expensive.

If the requirement does, in fact, prove unfeasible, the water company must report back to the legislature by next year with suggested alternatives.

"I just ask one question," Delegate J.B. McCuskey, R-Kanawha, said, speaking in support of the early monitoring. "If this chemical had not smelled like licorice would we have known it was there?"

The bill requires a registry and annual inspections of all above-ground storage tanks in West

Virginia, with a particular focus on tanks within "zones of critical concern," upstream from water intake points. Those tanks would have to be inspected by the DEP, while others would only have to be inspected by an industry-hired professional engineer.

Fees on tank owners would fund the inspections and registry.

Delegate Justin Marcum, D-Mingo, included an amendment that would exempt certain already permitted tanks from paying the fee, calling them duplicative.

Another amendment exempted gas stations and retail heating oil sellers from the fees.

An existing provision exempting coal companies from certain fees was removed.

House Judiciary Chairman Tim Manchin, D-Marion, called the fee exemptions "picking winners and losers."

"It's a slippery slope. The whole point is that everybody needs to contribute to this," Manchin said. "How many exemptions can we afford to have?"

Previous versions of the bill had included a long industry-crafted list of tanks that would be exempt from regulation. Those exemptions are mostly removed from the passed version, but the bill regulates only tanks larger than 1,320 gallons.

Evan Hansen, a Morgantown environmental consultant who worked on the bill has called that number a "major problem."

Hansen said lawmakers misinterpreted a federal rule on oil tanks. That rule, the Spill Prevention, Control and Countermeasure Rule, only exempts tanks if the total aggregate volume of all tanks at a site is less than 1,320 gallons. It does not exempt individual tanks of less than 1,320 gallons.

Previous versions of the bill had required any possible sources of contamination within ZCCs to have a stricter "individual" permit from the DEP, rather than a more lenient "general" permit but the House Finance Committee took out that language.

Individual permits are much more closely scrutinized and require a public comment period, while the general permit process is more streamlined.

On Wednesday the House compromised: Sites that have above-ground storage tanks within ZCCs would need an individual permit, but other possible sources of contamination -- things like construction sites and car washes -- within the zones could have a general permit.

The bill contains at least three new exemptions to the Freedom of Information Act, aimed at keeping chemical information secret from terrorists. But there are already several homeland security exemptions in FOIA law and the new chemical-specific exemptions may be in conflict with the federal Community Right-to-Know Act, which requires information on chemical inventories to be available to the public.

Every water utility in the state would have to submit a plan to the Department of Health and Human Resources, detailing how they would respond to a water contamination. The plans must include a study of the feasibility of adding a second water intake point, or several days of raw water storage.

If West Virginia American Water Company's treatment plant in Charleston had either a second intake or water storage, it perhaps could have shut off its primary intake and kept its system from being contaminated with the coal-cleaning chemical Crude MCHM.

The bill now needs to be approved by the Senate, or the Senate and the House must iron out their differences in a conference committee.

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# State Impact Pennsylvania

## DEP proposes \$2.3 million fine for 2008 gasoline spill from Sunoco pipeline

**March 5, 2014 | 8:42 AM**

**By Laura Legere**

A 12,000-gallon gasoline spill from a ruptured pipeline in Westmoreland County in 2008 could cost Sunoco Logistics Partners more than \$2.3 million in civil penalties from the state.

The Department of Environmental Protection filed a complaint Friday with the Pennsylvania Environmental Hearing Board asking it to impose a fine of at least \$2.38 million against Sunoco Logistics and its subsidiary Sunoco Pipeline.

The November 2008 spill in Murrysville contaminated Turtle Creek and killed nearly all of the aquatic life in a three-mile stretch of the waterway, triggered evacuations of homes and businesses, and shut down U.S. Route 22 for hours in the community 20 miles east of Pittsburgh. Mistakes during maintenance on the 8-inch interstate pipeline caused a plug to blow out, which “forced the gasoline to fountain twenty (20) to thirty (30) feet into the air” and rain “down onto and into nearby businesses, parking lots, and the surrounding soils and surfaces,” DEP said in its complaint. Federal pipeline regulators said the incident caused \$1.1 million in property damage but no injuries.

“This was a major event,” DEP spokesman John Poister said. “Most of the businesses affected had to be decontaminated and did not reopen for a month.”

Sunoco delayed operating a continuous pumping system that regulators had recommended until May 2010, so contaminants in a cutoff trench continued to leach into Turtle Creek long after the initial spill, DEP said in the complaint. Despite Sunoco’s cleanup efforts, regulators found

gasoline or its constituent chemicals in groundwater under or near the site on 189 separate occasions between November 2008 and June 2013.

Sunoco has made progress, Poister said, but the site has not yet been completely cleaned up.

Sunoco spokesman Jeff Shields said in a statement that the company disputes DEP's allegations as well as its characterization of the events in the complaint.

"Sunoco Logistics acted quickly, aggressively and responsibly during this event, with human health, safety and protection of the environment our top priorities at all times," he said. "We look forward to the opportunity to respond to the complaint before the Environmental Hearing Board at the appropriate time."

DEP calculated the proposed penalty by taking into account several violations of state laws worth \$1,985,000 in fines, the \$100,000 DEP spent responding to the spill, and an additional \$300,000 to deter companies from causing similar problems. DEP also asked the board to consider how much money the companies might have saved as a result of their violations and add it to the penalty, but that amount has not been calculated yet. The hearing board will ultimately determine the size of the fine.

Sunoco has already paid \$232,900 to the federal Pipeline and Hazardous Materials Safety Administration and \$99,000 to the state Fish and Boat Commission to settle violations from the same incident.

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# Harrisburg Patriot-News

## Commissioners back plea to end EPA rule making

By Perry County Times  
on March 06, 2014 at 7:00 AM

Perry County commissioners, in cooperation with officials from several other Pennsylvania counties, are supporting an appeal that would reverse a ruling allowing the U.S. Environmental Protection Agency to restrict water runoff flowing into the Chesapeake Bay.

Commissioners have backed the effort to ask the Third Circuit Court of Appeals to end the EPA's ability to create rules that affect farming and municipal water flow.

The appeal is a result of federal district court Judge Sylvia Rambo's decision to reject the American Farm Bureau's challenge to the Chesapeake Bay total daily maximum load, according to an EPA spokesman.

A total daily maximum load is the amount of sediment allowed to pass from municipal property into the Chesapeake Bay.

Pennsylvania Farm Bureau spokesman Mark O'Neill said while the EPA has the right to establish the daily load, the appeal opposes the fact that the EPA has the right to tell landowners how to reach it.

"Say you want to add a hog operation or double the size of a dairy heard, the way this is set up, the EPA can say, 'No you can't do that.' "

EPA agricultural adviser Kelly Sherk said sediment flowing into the bay from farming, storm water runoff and sewage systems can be harmful to wildlife — not just in the bay, but in local waters as well.

"It's not good for the trout population in local waters."

O'Neill said some EPA regulation is necessary, but added that the EPA may have taken it too far.

"The main issue behind this is that we're not against cleaning up the bay." However, the existing regulations could result in a significant loss of cropped land.

"The EPA itself projects that roughly 20 percent of cropped land in the watershed, which is equivalent to about 600,000 acres, will have to be removed from production," O'Neill said.

This is a result of the EPA's effort to mandate that farmers place trees and grassland around farmland as a buffer against lost sediment flowing into the bay's watershed.

"What they are saying is thousands of acres of land, where there used to be farmed crops, should now have trees," O'Neill said.

Logan Bower agrees with having buffers along waterways. In fact, it's a common practice on his Blain farm.

"We have buffers on all of our stream banks up to 50 feet. I lost a few acres, but I personally feel there needs to be a buffer."

Despite this notion, Bower is concerned that mandatory buffers could be excessive.

"I don't think you want to get carried away and take out too much cropland." He noted that a reduction in cropland could result in increased food prices.

Sherk said the EPA realizes that lost land is an issue, and if there is a need, state and federal funding is available to offset costs.

"Buffers, either grass or forest, have been very effective in reducing both nutrient and sediment

pollution,” she said.

O’Neill thinks the EPA should give Pennsylvania farmers more credit because they’ve worked to improve the Chesapeake Bay watershed.

“Pennsylvania leads the nation in no-till farming,” he said, explaining that no-till allows for less sediment loss.

“A recent USDA report found that conservation practices implemented by farmers in Pennsylvania and other bay states have reduced nitrogen levels by a staggering 48.5 million pounds per year, reduced phosphorus by more than 7 million pounds per year and reduced sediment loss by more than 15 million tons a year.”

Shenk said the EPA applauds Pennsylvania farmers for their efforts to adopt no-till farming.

“We’re finding that a lot of farmers are doing it without state or federal funding.” Plus, “farmers are finding no-till is good for their soil and cost effective.”

However, Shenk said no-till farming is not an ultimate solution, and, in some cases, buffers may need to be coupled with no-till.

“There isn’t one magical solution,” O’Neill said.

Farming is not the only industry affected by the regulations.

“It’s not just about farms,” O’Neill said. “It’s also about sewage plants and other runoff.”

And, this is a problem Perry County Commissioners Brenda Benner said concerns her.

“Not only will it take many acres of productive land out of the picture, area flood insurance will drastically increase.”

Benner believes this could devalue county property and could be a cause for increased taxation and lost funding.

“You’re not going to go buy a house where you have to spend an equal amount on your mortgage on flood insurance.”

Shenk said a failure to address sediment contamination could lead to drinking water pollution. “One point to make is that everyone has a role to play in restoring both local and bay waters.”

Perry County Commissioner Stephen Naylor has been working with commissioners from other Pennsylvania counties to gather information about how EPA regulations would harm the area.

Naylor said the group submitted the information as an amicus brief — meaning friend of the court — to an attorney in the District of Columbia to present during the appeal.



"Farming is Pennsylvania's No. 1 business," Naylor said, expressing frustration about the lack of confidence the EPA has on farmers to regulate themselves.

Because of advances in agriculture technology, Naylor said farmers often are aware of sediment loss and how to minimize it. "We're policing ourselves."

Though Naylor thinks federal courts have the people's best interests in mind, he said they often fail to realize how their rulings can affect rural communities. "I don't think they always see what it does to us in the county."

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# Baltimore Sun

## Harbor Point construction could begin by end of the month

### **Regulators give green light to new air quality tests**

By Natalie Sherman, The Baltimore Sun

9:46 p.m. EST, March 5, 2014

Environmental regulators said Wednesday that construction on the Harbor Point project in Baltimore could begin by the end of the month, after they approved a plan to measure air quality at the former factory site laced with toxic chemicals.

Harbor Point developers will begin taking samples Thursday to establish a baseline for air quality near the project, where construction plans call for temporary exposure of contaminated soil.

State and federal regulators still must approve a plan to monitor the air quality while construction is underway. They said they will review the samples before giving the final go-ahead, but, barring unexpected results, expect it to be similar to the plan they approved.

Final approval could come as early as the end of the month, said Horacio Tablada, the Maryland Department of the Environment's director of land management administration.

"It's an important step toward starting the project," said Marco Greenberg, vice president of Beatty Development Group, the company that is developing the site. "It's taken several months, a lot of back and forth, a lot of hard work on the part of our team and certainly on the part of the regulators. It was good to get it done."

A new regional headquarters tower for the energy company [Exelon Corp.](#) is to anchor Harbor

Point, a proposed \$1.8 billion development on a 27-acre waterfront site between Harbor East and Fells Point.

The project has been controversial partly because of an estimated \$400 million in public subsidies, including approval for \$107 million in city-issued tax increment financing bonds.

"The neighbor, lay person response is that the project is an absolute anathema to the city at a variety of levels. The environmental level is one, and it's a very critical one," said Stelios Spiliadis, owner of the Black Olive Inn & Restaurant.

Spiliadis said he has not seen the new plans for monitoring air quality, but he remains uncomfortable with the project across South Caroline Street from his boutique hotel. He said he will review the document with scientists.

"I do not trust that the process of monitoring is going to be satisfactory and comprehensive in terms of developing the baseline," Spiliadis said.

Beatty had hoped to break ground on the Exelon tower in mid-October, but, in November, regulators rejected the developer's plans to protect the public from the exposure of contaminants left from the site's years as a chromium processing plant.

They also ordered new air-quality tests, saying, for example, that earlier readings from the National Aquarium and Maryland Science Center were unreliable and might have shown "artificially high" levels of cancer-causing hexavalent chromium.

In December, the Environmental Protection Agency and the Maryland Department of the Environment approved a plan for environmental safeguards without a final air-quality monitoring plan.

The approval allowed preliminary work to begin, but blocked driving pilings for the tower and exposing the soil, which was capped during site remediation in the 1990s.

"The agencies were extremely diligent, and they did a very detailed review of the plans and we ended up making several fairly significant modifications," Greenberg said.

The changes added less than \$1 million in costs, he said.

Under the current agreement, the developer will collect dust samples from the project site, the aquarium and a Baltimore fire station on Hillen Street. The samples will be taken around the clock for 15 days and analyzed by a North Carolina lab.

The agencies also are requiring a more sensitive detection method than previously proposed.

The Maryland Department of the Environment will send staff "fairly frequently" to make sure the data is being collected properly, Tablada said.

"We always reserve the right to change if we see ... something that could be done differently," he said. "We can always improve what we've done."

Edward Bouwer, chairman of the [Johns Hopkins University](#)'s department of geography and environmental engineering, said he had been concerned that the sampling locations to establish the baseline would be mostly close to the site. He had recommended that scientists collect samples from several miles away to establish air-quality benchmarks.

Bouwer said he had not seen the plan, but "in principle," the Baltimore fire station site might represent a better plan.

"My feeling was, you're not getting a good measure of what background could be," he said. "Maybe this fire station is farther away."

Beatty installed equipment to begin sample collection Wednesday, but an electrical problem delayed the start until Thursday, Greenberg said. Monitoring during construction will focus more exclusively on the site, he said.

Tablada said the goal of the monitoring is to maintain current air-quality levels.

"We have a super-sensitive testing method," he said. "The standard is, the construction should not cause any deviation from what is ambient there right now."

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# State Impact Pennsylvania

## Gas industry groups seek to intervene in Act 13 case

**March 5, 2014 | 5:49 PM**

**By [Marie Cusick](#)**

Pennsylvania's three major gas industry trade groups have [filed a petition to intervene](#) in the ongoing court battle over the state's oil and gas law, known as [Act 13](#).

[In December](#), the state Supreme Court struck down portions of the 2012 law that restricted the ability of local governments to zone oil and gas development, but the justices left a number of matters unresolved and sent the case back to the lower Commonwealth Court.

The court is now reviewing, among other things, whether the rest of Act 13 can stand without the sections that were struck down.

The case is primarily between local governments who challenged the law and the Commonwealth of Pennsylvania. However, attorneys representing the Marcellus Shale

Coalition, the American Petroleum Institute, and the Pennsylvania Independent Oil and Gas Association filed a petition today arguing they should also be part of the case.

“Because key provisions of Act 13 were struck down, there are significant questions regarding the certainty of investments and ability for the natural gas industry to develop across the Commonwealth that necessitated our motion to intervene,” says Stephanie Catarino Wissman, Executive Director of API’s Pennsylvania’s division.

The petition points out that oil and gas operators have paid over \$400 million so far in Act 13 impact fees. The attorneys argue the industry has a “distinct and unique interest” in whether the court upholds the fee.

“This Court’s decision will materially affect the legal landscape for the oil and gas industry,” they write. “No current party to this case must actually plan for, finance, and comply with Act 13’s extensive list of regulatory requirements.”

Jordan Yeager is an attorney who represents local governments who challenged Act 13. He says he would be surprised if the court allows the trade groups to be a party to the case.

“It’s really a lot of lawyering,” he says. “The industry tried this before, and the court said no. There are no new claims in the case. They don’t get to revisit questions the court has already decided.”

In January, the Corbett administration asked the state Supreme Court to reconsider its decision, but the court recently denied the request.

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# WCHS-TV 8 Charleston

## Brockovich Says Concerns Remain Over MCHM In Water Tanks, Appliances

CHARLESTON, W.Va. – Environmental and legal activist Erin Brockovich said concerns remain that MCHM sticks to plumbing and fixtures in water systems affected by the West Virginia water crisis.

In a statement posted on her website this week, Brockovich asked many gallons of water it would take to remove the chemical from water heaters and other appliance reservoirs.

Brockovich said those using the water should remain vigilant, and that she believed the water was safer to use for cleaning if it was odor free and appeared clear.

“Myself, I would continue to wait for the system to be confirmed chemically free and then thoroughly flush and drain the water system before using it for drinking or cooking,” Brockovich

wrote.

Brockovich and her legal team have visited West Virginia to investigate the situation, following the spill of 10,000 gallons of MCHM at Freedom industries Elk River facility, which contaminated the water supply to 300,000 West Virginians in nine counties.

Brockovich said her team is working on its legal strategy and doesn't want to "get caught up in the wasteful time delay tactic of bankruptcy court."

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# South Boston News and Record (Va.)

## Frustration rises as long-term impact of spill goes unanswered

By Susan Kyte  
News & Record

SoVaNow.com / March 03, 2014

A month into the coal ash spill on the Dan River, some local businesses and organizations on the river basin are growing increasingly frustrated by the lack of information on the long-term impact of the disaster.

At Bobcat's Bait and Tackle in Clarksville, Bobby "Bobcat" Whitlow says the phone began ringing almost immediately at his shop as anglers called to ask about the spill and its impact on Buggs Island Lake.

"People wanted to know if it was safe to fish, or go near the water," said Whitlow. Clearly, his customers — many who hail from outside the area — were worried, but "I had no answers for them. I knew only what I read in the paper," he said.

Shortly after he heard about the release of coal ash from Duke Energy's Dan River Steam Station in Eden, N.C., Whitlow said he put his boat in on the Dan River to witness the effects downstream. The water was gray, instead of its usual brown.

"You could tell right away something wasn't right."

Since he wasn't fishing that day, Whitlow said he could not tell if the spill was having an impact on the fish.

Whitlow, whose livelihood and passion for fishing go hand-in-hand — he sponsors or is affiliated with several local and regional tournaments — is also frustrated by the lack of answers coming from “the experts.” He says it’s all well and good that Duke Energy has accepted responsibility for the spill, and that water tests are showing no discernible problems, but he’s more worried about the fish and the sediment where these toxic chemicals will settle.

“The worms and other foods the fish consume live in the bottom of the lake. If it’s contaminated, what does that do to the fish?” he asked.

“They” — officials with Virginia and North Carolina agencies, and the U.S. Environmental Agency — “are telling you, ‘If you see any of the [sludge] don’t touch it,’ so what does that do to the fish or other wildlife?”

Whitlow said at least one local angler has told him he will not fish “in his usual spots” on Buggs Island Lake. It’s comments like these that worry Mecklenburg County’s Tourism Coordinator, Justin Kearns.

“If there’s one person saying that, there are more,” said Kearns, who fears that if word spreads that the lake is not safe to fish, tourists will stop coming to the area.

Kearns, who was hired last year to help rebrand Southside Virginia as a destination for outdoors enthusiasts, created an entire marketing campaign around the pristine beauty of the lake and surrounding forests, and the abundance of hunting and fishing opportunities.

For now, Whitlow confirmed, there’s no sign that any of the fishing competitions are shying away from the area. However, he added, most of the competitions are “catch and release.” Participants don’t keep or plan to eat the fish.

Scott Shanklin, who heads Occoneechee State Park in Clarksville, said it is too soon to tell if the spill will affect the park’s summer camping season. “If by April, people are not booking the cabins, that could be an indication of a problem,” Shanklin said.

There are a number of organizations working to promote outdoor water-related opportunities on the river and the wider Roanoke River basin, of which the Dan is a part. Groups like the Dan River Basin Association and the Roanoke River Basin Association are developing and marketing area blueways (water trails for canoers and kayakers) with a goal of bringing in more tourists. To date, they’ve collectively spent over \$150,000 to install trailhead interpretive signs, river mileage markers, and launch sites on waterways affected by the spill.

The long-term consequences of the coal spill could upend their plans.

Tiffany Haworth, who serves as the executive director of the Dan River Basin Association, says she is trying to remain optimistic. The message she is promoting is that Southside Virginia is still open for the outdoor-loving tourists. There are over 150 miles of blueways on the Roanoke River Basin alone, and most stretches of the Roanoke have not been affected by the spill.

She said she is encouraging people to consider traveling to those areas, as well as sites on the Dan upstream from the Duke Energy plant in Eden.

She is quick, however, to warn kayakers and canoers to stay away from the Dan River below the spill site. While officials note the water is safe to drink, Haworth pointed out that North Carolina's Department of Health and Human Services advises people to avoid recreational contact with water and sediment in the Dan River in North Carolina downstream of the Duke Power-Eden spill site.

The agency also recommends that people avoid contact with submerged or floating coal ash, or ash washed up on the riverbank, and do not eat any fish or shellfish collected downstream from the spill site.

Virginia's Health Department has not upgraded its consumption advisory since the spill. It remains the same as it's been for the past several years — do not eat more than two servings of fish from Buggs Island Lake each month. A similar advisory is in place for portions of the Dan River.

Despite her optimism, Haworth said her organization is not waiting for government officials to study the consequences of the coal ash release.

The Dan River Basin Association is about to commence its own testing of the invertebrates that live in the sediment of the riverbed.

"They are the true indicators of the health of the waterways," said Haworth, as the creatures are a major food source for fish, turtles and other amphibians that live in the river.

Since the work of the Dan River Basin Association will not include an analysis of the Kerr Reservoir sediment, Andrew Lester, executive director of the Roanoke River Basin Association, said his group has plans to perform similar tests on the lake. These tests cost a lot of money, explained Lester. Right now, the RRBA is looking for funding to cover their costs.

Both Lester and Haworth encourage people to stay informed about the spill and its aftermath. One excellent source of information is found on the Dan River Basin Association website at <http://www.danriver.org>. They also agree that Duke Energy needs to be held accountable not just for the spill, but for the cleanup and for future marketing to restore people's faith that Southside Virginia is a good place to hunt and fish.

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# Wheeling Intelligencer

Company Fined For Deadly Blast

## **Three AL Solutions employees killed in 2010**

**March 6, 2014**

**By STEPHEN HUBA - For The Intelligencer , The Intelligencer / Wheeling News-Register**

NEW CUMBERLAND - A U.S. District Court judge has approved a negotiated settlement that resolves the federal government's civil case against New Cumberland metal recycler AL Solutions Inc.

The case stems from a Dec. 9, 2010, explosion at the South Chester Street plant that killed three AL Solutions employees - brothers James Eugene Fish, 38, and Jeffrey Scott Fish, 39, both of New Cumberland, and Steven Swain, 27, of Weirton. The Fish brothers were pronounced dead at the scene, and Swain succumbed to injuries he suffered in the blast four days later in a Pittsburgh hospital.

The accident triggered investigations by the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration and the U.S. Chemical Safety Board - as well as wrongful death lawsuits by the Fish brothers' estates and the family of Steven Swain.

The federal settlement brings some closure to an incident that shook New Cumberland - literally and figuratively - more than three years ago, even as the lawsuits continue to make their way through Hancock County Circuit Court.

"We intend to push the case towards trial," said Weirton attorney Mark Colantonio, who, with Robert Fitzsimmons, is representing the Fish family. Attorney Eric Frankovitch is representing the Swain family.

The settlement, recently signed by U.S. District Court Judge Frederick P. Stamp Jr. of the Northern District of West Virginia, resolves a series of Clean Air Act charges stemming from the accident and filed jointly by EPA and OSHA.

"Our combined efforts have resulted in settlements that provide a comprehensive framework for the company to build cutting-edge safeguards into its processes in order to protect people and the environment," said EPA Regional Administrator Shawn M. Garvin.

Among other things, the settlement requires AL Solutions to process or dispose of approximately 10,000 drums, or 2.4 million pounds, of titanium and zirconium being stored at its New Cumberland and Weirton facilities by December.

AL Solutions, whose corporate offices remain in New Cumberland but whose operations mainly are in Burgettstown, Pa., and Washington, Mo., recycles titanium and zirconium raw materials for use as alloying additives by aluminum producers.

Company officials declined to comment.



On Dec. 9, 2010, the Fish brothers and Steven Swain were working with zirconium powder in the plant when it ignited and exploded. The explosion occurred when "titanium and zirconium powder reacted, causing the release of hydrogen gas which ignited and caused zirconium and titanium fines, dust and swarf to combust with great force," according to a separate complaint filed by the West Virginia Department of Environmental Protection.

Both substances are considered "highly flammable and explosive" by the EPA, which noted in the settlement documents that they are "easily ignited under certain conditions, specifically when in dust form."

In October 2010, about six weeks before the fatal accident, and in subsequent inspections, the state DEP focused on what it considers the illegal storage of hazardous waste at the New Cumberland and Weirton facilities. The raw material is stored on-site, in 55-gallon drums, under water or oil to minimize the chance of spontaneous combustion, according to the DEP.

DEP inspectors alleged the following violations by AL Solutions:

- Exceeding the 90-day limit for storage of hazardous waste.
- Failure to properly label drums with the words "hazardous waste."
- Failure to mark drums with accumulation start dates.
- Storage of hazardous waste in drums in poor condition.
- Failure to maintain adequate aisle space between drums.
- Difficulty in conducting weekly inspections of the drum storage area because of inadequate aisle space.
- Storage of drums less than 50 feet from the facility boundary.
- Failure to submit an approved plan of corrective action.

AL Solutions contends the material on-site is not hazardous waste but "valuable feedstock" that is awaiting processing and recycling at its other facilities, according to a memorandum filed by Civil & Environmental Consultants Inc. of Pittsburgh.

DEP spokesman Tom Aluise said all the storage violations will be resolved through the EPA/OSHA settlement.

"There was a disagreement over the question of whether the materials were hazardous waste; however, it was resolved because (AL Solutions) agreed to remove all wastes by December 2014," Aluise said.

According to the settlement, AL Solutions must:

- Reduce its titanium store in New Cumberland according to a schedule that will reduce it to zero by December.
  - Limit its acceptance of any new zirconium without prior EPA approval and limit its acceptance of new titanium until 75 percent of its inventory has been properly processed or disposed of.
  - Ship all zirconium for disposal or processing within 90 days of the effective date of the consent decree, which is Feb. 4.
  - Implement adequate safety procedures for the storage area in New Cumberland, including hydrogen monitoring and forward-looking infrared heat detection to identify volatile drums and prevent fires and explosions.
  - Pay a \$100,000 civil penalty to the EPA and a \$97,000 penalty to the U.S. Department of Labor.
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# Charleston Gazette

## Editorial: Water bill weak enough

NEW CUMBERLAND - A U.S. District Court judge has approved a negotiated settlement that resolves the federal government's civil case against New Cumberland metal recycler AL Solutions Inc.

The case stems from a Dec. 9, 2010, explosion at the South Chester Street plant that killed three AL Solutions employees - brothers James Eugene Fish, 38, and Jeffrey Scott Fish, 39, both of New Cumberland, and Steven Swain, 27, of Weirton. The Fish brothers were pronounced dead at the scene, and Swain succumbed to injuries he suffered in the blast four days later in a Pittsburgh hospital.

The accident triggered investigations by the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration and the U.S. Chemical Safety Board - as well as wrongful death lawsuits by the Fish brothers' estates and the family of Steven Swain.

### Article Photos



File photo/A firefighter prepares to enter the AL Solutions facility in New Cumberland following the deadly Dec. 9, 2010, explosion.

The federal settlement brings some closure to an incident that shook New Cumberland - literally and figuratively - more than three years ago, even as the lawsuits continue to make their way through Hancock County Circuit Court.

"We intend to push the case towards trial," said Weirton attorney Mark Colantonio, who, with Robert Fitzsimmons, is representing the Fish family. Attorney Eric Frankovitch is representing the Swain family.

The settlement, recently signed by U.S. District Court Judge Frederick P. Stamp Jr. of the Northern District of West Virginia, resolves a series of Clean Air Act charges stemming from the accident and filed jointly by EPA and OSHA.

"Our combined efforts have resulted in settlements that provide a comprehensive framework for the company to build cutting-edge safeguards into its processes in order to protect people and the environment," said EPA Regional Administrator Shawn M. Garvin.

Among other things, the settlement requires AL Solutions to process or dispose of approximately 10,000 drums, or 2.4 million pounds, of titanium and zirconium being stored at its New Cumberland and Weirton facilities by December.

AL Solutions, whose corporate offices remain in New Cumberland but whose operations mainly are in Burgettstown, Pa., and Washington, Mo., recycles titanium and zirconium raw materials for use as alloying additives by aluminum producers.

Company officials declined to comment.

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the plant when it ignited and exploded. The explosion occurred when "titanium and zirconium powder reacted, causing the release of hydrogen gas which ignited and caused zirconium and titanium fines, dust and swarf to combust with great force," according to a separate complaint filed by the West Virginia Department of Environmental Protection.

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- Pay a \$100,000 civil penalty to the EPA and a \$97,000 penalty to the U.S. Department of Labor.

- See more at: <http://www.news-register.net/page/content.detail/id/596721/Company-Fined-For-Deadly-Blast.html?nav=515#sthash.9zOtNlio.dpuf>

What does it take to get some meaningful action around here? A surprise chemical leak — that should have been a surprise to no one in a position to prevent it — that shuts down the local economy for days and continues to affect a nine-county area?

Apparently not. A mild bill to better monitor and regulate above ground storage tanks has been written and rewritten in the Senate and now in the House. Headed to the House floor in the final days of the session, it's pretty much a mess:

- n The House Finance Committee passed a version of SB 373 on Monday, but first eliminated a provision to require a long-term state study of health impacts of the Jan. 9 spill. Delegate Meshea Poore's provision should be restored.

- n House Finance also removed a requirement for "early warning" spill sensors for West Virginia American Water's Elk River plant. The water company's scare tactics worked. On sober reflection, House members should restore this provision.

- n Finance Committee members also deleted a requirement for tougher permitting of water pollution sources near drinking water supplies. Put it back.

- n House leaders wisely removed the industry-written exemptions that Gov. Tomblin asked for and got the Senate to include in their versions of the bill. Industry lobbyists are pushing to put them back in. House Speaker Tim Miley should not allow it. Senate President Jeff Kessler should go along with a mostly exemption-free House bill.

- n Lawmakers removed language that would allow residents to force — by lawsuit if necessary — the state DEP, Bureau of Public Health or companies to comply with the bill. Sometimes, that is the only way things get done.

n It's too secretive. Current law already allows plenty of homeland security exemptions from the state's Freedom of Information Act. West Virginians don't need more FOIA exemptions in this bill to hide important chemical safety information.

n By some mishap — one hopes — a version of this bill would apply only to tanks that store 1,320 gallons. It should apply to facilities that store at least that amount, which could be in several tanks. Seriously, House leaders, straighten this stuff out.

n West Virginia American Water has shown almost no interest in a second, emergency intake for its Charleston plant, so the Legislature should require the company to hire a trustworthy outside expert to report to the public on the feasibility of various options.

It's not enough to mouth concerns about public health. At some point, someone has to make sure the water is safe — and stays that way.